

Exemption No. 10742

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC 20591

In the matter of the petition of

FIREHAWK HELICOPTERS, INC.

for an exemption from §§ 133.33(d)
and (e), 133.45(d), and 91.313(e) of
Title 14, Code of Federal Regulations

Regulatory Docket No. FAA-2012-1243

DENIAL OF EXEMPTION

By letter dated November 1, 2012, Mr. Timothy Hansen, Chief Pilot, Firehawk Helicopters, Inc. (Firehawk), 8850 Airport Blvd., Leesburg, FL 34788 petitioned the Federal Aviation Administration (FAA) on behalf of Firehawk for an exemption from §§ 133.33(d)-(e), 133.45(d), and 91.313(e) of Title 14, Code of Federal Regulations (14 CFR). The proposed exemption, if granted, would permit Firehawk to operate its Sikorsky S-70 helicopters (N2FH, N135BH, N136NH, N137BH and future acquisitions of the same make and model), a rotorcraft type certificated in the restricted category under § 21.25, in external-load operations over congested areas.

The petitioner requests relief from the following regulations:

Section 133.33(d) prescribes, in pertinent part, that the holder of a Rotorcraft External-Load Operator Certificate may conduct (in rotorcraft type certificated under and meeting the requirements of 14 CFR part 27 or part 29, including the external-load attaching means) rotorcraft external-load operations over congested areas if those operations are conducted without hazard to persons or property on the surface and comply with the following:

- (1) The operator must develop a plan for each complete operation, coordinate this plan with the FAA Flight Standards District Office (FSDO) having jurisdiction over the area in which the operation will be conducted, and obtain approval for the operation from that FSDO. The plan must include an agreement with the appropriate political subdivision that local officials will exclude unauthorized persons from the area in which the operation will be conducted, coordination with air traffic control, if necessary, and a detailed chart depicting the flight routes and altitudes.
- (2) Each flight must be conducted at an altitude, and on a route, that will allow a jettisonable external load to be released, and the rotorcraft landed, in an emergency without hazard to person or property on the surface.

Section 133.33(e) prescribes, in pertinent part, that except as provided in § 133.45(d), the holder of a Rotorcraft External-Load Operator Certificate may conduct external-load operations, including approaches, departures, and load positioning maneuvers necessary for the operation, below 500 feet above the surface and closer than 500 feet to persons, vessels, vehicles, and structures, if the operations are conducted without creating a hazard to persons or property on the surface.

Section 133.45(d) prescribes that no person may conduct an external-load operation under this part with a rotorcraft type certificated in the restricted category under 14 CFR § 21.25 over a densely populated area, in a congested airway, or near a busy airport where passenger transport operations are conducted.

Section 91.313(e) prescribes that except when operating in accordance with the terms and conditions of a certificate of waiver or special operating limitations issued by the Administrator, no person may operate a restricted category civil aircraft within the United States—

- (1) Over a densely populated area;
- (2) In a congested airway; or
- (3) Near a busy airport where passenger transport operations are conducted.

The petitioner supports its request with the following information:

The petitioner states that it operates four S-70 and three AS-350-B3 helicopters in support of interagency fire fighting operations. In the conduct of these operations the petitioner is called upon to perform external load operations not only in support of firefighting operations but also external load operations in support of construction projects, geological exploration, and others. The petitioner states it is currently able to perform operations over “congested areas” in only the three AS-350-B3 helicopters due to the restraints of 14 CFR §§ 133.33 and 133.45.

The petitioner asserts that it is unique when compared to other petitioners who have requested relief from these same parts. The petitioner states the Sikorsky S-70 is a transport category helicopter certificated under both § 21.25(a)(2) and part 29 for non-U.S. Army approved modifications. The petitioner also states the S-70 is not a military surplus model, but is a separate model manufactured under Production Certificate Nos. 105 and 8 SO as an “S-70 (Restricted Category) Approved: 10/21/83 (Derivative aircraft of U.S. Army Models UH-60A and UH60L)’ (per Type Certificate Data Sheet H3NE).” The petitioner states these aircraft are sold into the civilian industry and are maintained in continued compliance with civil requirements. According to the petitioner the S-70 was manufactured in compliance with 14 CFR § 21.183 which prescribes, in pertinent part, the issue of standard airworthiness certificates for normal, utility, acrobatic, commuter, and transport category aircraft.

The petitioner asserts that the S-70 is a transport category aircraft that was certificated under the restricted category at the request of the manufacturer but states that it can “offer no documentary evidence of this claim.” The petitioner also asserts the reference to part 29 under Type Certificate Basis as stated in Type Certificate H3NE is evidence that this aircraft is intended to remain in full compliance with the specifications of part 29. According to the petitioner, the S-70 does not meet the intent of §§ 133.33(d)-(e), § 133.45(d), or § 91.313(e) because it is a restricted category aircraft for sale to the civil industry and not a military surplus model. It is the petitioner’s position that, due to the reference to part 29 in H3NE, this helicopter does not meet the letter of these parts.

The petitioner states that the availability to perform external-load operations is in the public interest when such operations are conducted safely with proper oversight and Congested Area Plan (CAP) approval. The petitioner states that an exemption, if granted, would make a “transport” category aircraft with a greater load-carrying ability and a far superior safety record than currently used equivalent performing rotorcraft available for such use.

The petitioner states that the S-70 helicopter is a civilian derivative of the military Sikorsky UH-60 helicopter manufactured under a production certificate. The petitioner asserts that by regulation it is not required to be inspected by the FAA prior to certification, as is a surplus military rotorcraft. According to the petitioner, the FAA is already satisfied that this model meets a higher standard of conformity and safety than a surplus military model. The petitioner states the S-70 is maintained under a factory approved continuing maintenance program with factory approved parts. The petitioner states that the S-70 helicopter is required by Type Certificate H3NE to be maintained continuously in compliance with part 29. The petitioner’s position is that since the S-70 helicopter has undergone the civil certification rotorcraft process and has been continuously in the civil registry since new, the grant of this exemption will provide a level of safety equivalent to the rule.

The FAA has determined that good cause exists for waiving the requirement for Federal Register publication because this exemption is not precedent setting. The FAA issued a denial of exemption in 2003 to Brainerd Helicopters, Inc., a doing business as (dba) name of Firehawk Helicopters, Inc., operating under the same Air Carrier Certificate. The FAA finds this petition materially similar to the petition filed under Firehawk's dba Brainerd Helicopters, Inc., and the analysis remains substantially unchanged.

The FAA's analysis is as follows:

The FAA has fully considered Firehawk's petition for exemption, including supporting information, and finds a grant of exemption would not provide a level of safety at least equal to that provided by the rule(s) from which you seek the exemption or be in the public interest.

The petitioner states that the Sikorsky S-70 is a transport category helicopter certificated under both § 21.25(a)(2) and part 29 for non-U.S. Army approved modifications. The FAA does not concur that the S-70 is a transport category helicopter. The Sikorsky S-70 helicopter is a "restricted" category rotorcraft with a restricted category type certificate issued under § 21.25(a)(2), as stated on Type Certificate Data Sheet (TCDS) H3NE for the S-70C and TCDS H5NE for the S-70A. Airworthiness certificates indicate it has a restricted classification special airworthiness certificate issued under § 21.185. The S-70 helicopter was not type certificated to meet the part 29 airworthiness standards. It was certified to meet the regulatory requirements for a restricted category aircraft under § 21.25(a)(2). The part 29 airworthiness standards apply to subsequent modifications made to the aircraft that are not approved by the U.S. Army.

The petitioner also states that the S-70 was manufactured in compliance with § 21.183 under a production certificate and is entitled to a standard airworthiness certificate without further showing. However, the FAA finds that the S-70 was not manufactured in compliance with § 21.183. Sikorsky was granted a production approval to produce the S-70 under an FAA Production Certificate which was issued under subpart G of part 21. Section 21.183 only applies to the issuance of standard airworthiness certificates for aircraft that are type certificated to meet a certain category of airworthiness standards such as the part 29 standards for transport category rotorcraft. An S-70 helicopter would not be eligible for a standard airworthiness certificate because it was not certified to part 29 airworthiness standards. Certification requirements for restricted category aircraft do not provide the same level of safety that is required for aircraft certificated in the standard category under parts 27 and 29. In view of the differences between the airworthiness requirements applied to standard and restricted category rotorcraft, the FAA prohibited restricted category rotorcraft external-load operations over congested areas to ensure an appropriate level of safety. See 42 FR 24198 (May 12, 1977).

The petitioner asserts that reference to part 29 in the Type Certification Basis of the S-70 TCDS H3NE indicates that the aircraft has undergone the civil certification process and that it is required to remain in full compliance with the specifications of part 29 so therefore is a transport category certificated rotorcraft. The FAA disagrees. Reference to part 29 in each TCDS applicable to the petitioner's aircraft, H3NE and H5NE, does not indicate the aircraft meets part 29 airworthiness certification standards for type certification. This reference applies to non-U.S. Army approved modifications which must be made in accordance with the requirements of part 29. Accordingly, the petitioner cannot ensure an equivalent level of safety will be maintained using a rotorcraft for external-load operations over congested areas that has not been type certificated under part 27 or part 29.

The petitioner states that the availability to perform external-load operations is in the public interest when such operations are conducted safely with proper oversight and congested area plan (CAP) approval. The petitioner further states that a grant of this exemption is in the public interest because it would make available a transport category rotorcraft which is not military surplus, has a greater load carrying ability, and a superior safety record than currently used equivalent performing rotorcraft. As discussed previously, the FAA does not agree that the S-70 is a transport category rotorcraft. It is, in fact, a restricted category helicopter. Additionally, petitioner's statement of public interest is not persuasive as it has not demonstrated a need, other than for its own benefit, for the FAA to grant this exemption.

We note that Firehawk's petition is largely a restatement of a petition filed by Brainerd Helicopters, Inc. (DBA Firehawk Helicopters, Inc., and operating under the same Air Carrier Certificate) on February 24, 2003. *See* Regulatory Docket No. FAA-2003-14582. This decision is consistent with the FAA's Denial of Exemption No. 8137 to that petition which was issued October 9, 2003.

The FAA's Decision:

In consideration of the foregoing, I find that a grant of exemption would not be in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701, delegated to me by the Administrator, the petition of Firehawk Helicopter, Inc. for an exemption from 14 CFR §§ 133.33(d)-(e), § 133.45(d), and § 91.313(e) is hereby denied.

Issued in Washington, DC, on March 29, 2013.

/s/

Michael J. Zenkovich
Acting Deputy Director, Flight Standards
Service